tax at a late stage, the plaintiffs still owed "about M$20,000 or so" to Sinar (S) Company, though there seemed to have been some over-payment.

On balance, I am sure that the second defendant has proved that the plaintiffs owe him the sum of M$10,158.25. This was due to him under the oral contract, was in one of the invoices submitted by him, was due to him and was not paid by the plaintiffs. As there was no agreement between the parties as to deduction of 20% of the sums paid by the plaintiffs to the defendants, the latter were entitled to the full amount, on all payments, including the M$10,158.25.

There should, therefore, be judgment for the defendants on the counterclaim only for M$10,158.25, plus interest at 6% from 30 September 1984, when the money was due, until the date of judgment herein.

Costs

I have decided that the plaintiffs were not entitled to succeed on their main claim, not because there may be no merits in their favour, as to which I did not reach any finding, but because it is not open to any country to enforce the revenue laws of another.

It must follow that the defendants are entitled to their costs and on the claim, even though these are unlikely to be large, since they were not legally represented except at earlier stages of the proceedings against them.

Security for the costs of the defendants has already been lodged, in the sum of B$50,000 by means of a bank guarantee which has been given on behalf of the plaintiffs.

The costs of the defendants on the claim should be taxed and the balance paid to the plaintiffs.

So far as the counterclaim is concerned, the costs of this are very small as a separate issue, since these are largely absorbed in the costs of the main action by the plaintiffs. I therefore make no order as to the costs of the counterclaim.

Order accordingly.

Solicitors: *D.F. Abang Zen.*

MALAYSIAN REPORTS

UNITED GENERAL INSURANCE CO. SDN. BHD. v. PROGRESS CREDIT SDN. BHD.

[S.C. (Seah, Hashim Yeop A. Sani & Syed Agil Barakbah S.C.JJ.) 10 March & 21 May 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 120 of 1987]

Insurance – Motor car insurance policy – Endorsement in policy – Hire purchase agreement – Effect of endorsement – Insured not deemed the agent or trustee or the owners under hire purchase agreement – Prohibition of assignment of rights, benefits and claims under the policy.

In this case, the insurance policy taken out by the insured covering a motor vehicle, which was the subject of a hire purchase agreement with the respondent, contained an endorsement in the following terms:

"It is hereby understood and agreed that Progress Credit Sdn. Bhd. (hereinafter referred to as "the owners") are the owners of the motor vehicle and that the motor vehicle is the subject of a hire purchase agreement made between the owners of the one part and the insured of the other part. It is further understood and agreed that any payment made in respect of loss or damage (which loss or damage is not made good by repair reinstatement or replacement) under section 1 of this policy shall be made to the owners as long as they are owners of the motor vehicle and their receipt shall be a full and final discharge to the corporation in respect of such loss or damage. *It is also understood and agreed that notwithstanding any provision in the hire purchase agreement to the contrary, this policy is issued to the insured, namely, Wong Kim Miew, as the principal party and not as agent or trustee for the owners and nothing herein shall be construed as constituting the insured as agent or trustee for the owners or as an assignment (whether legal or equitable) by the insured to the owners of his rights benefits and claims under this policy. It is lastly understood and agreed that the insured shall not assign his rights benefits and claims under this policy without the prior consent in writing of the corporation* (emphasis given). Subject otherwise to the terms of the policy."

The respondent in this case brought an action against the appellant (the insurance company) in its own name. Judgment was given in favour of the respondent in the High Court on appeal from the Sessions Court and the appellant appealed.

Held, allowing the appeal: (1) the amended endorsement in this case ousted the application of *Malaysian Australian Finance Co. Ltd.* v. *The Law Union & Rock Insurance Co. Ltd.*(1) and that case was therefore distinguishable from the facts of the present case. The amended endorsement curtailed the right of the respondent as legal owner of the motor vehicle from bringing the suit against the appellant in its own name;

(2) the rights regarding assignment were clearly set out in the amended endorsement and as no written consent duly signed by the appellant was produced, there was no lawful assignment of the policy by the insured to the respondent.

Cases referred to:

(1) *Malaysian Australian Finance Co. Ltd.* v. *The Law Union & Rock Insurance Co. Ltd.* [1972] 2 M.L.J. 10 (distd).

(2) *Nouvau Mont Dor (M) Sdn. Bhd.* v. *Faber Development Sdn. Bhd.* [1984] 2 M.L.J. 268 (folld).

SUPREME COURT.

V. Krishnan for the appellant.

Henry Cheah for the respondent.

Cur. Adv. Vult.

Seah S.C.J. (delivering the judgment of the court): In *Malaysian Australian Finance Co. Ltd.* v. *The Law Union & Rock Insurance Co. Ltd.*[1] an endorsement in a commercial vehicle insurance policy relevant to the case reads as follows:

"It is hereby understood and agreed that Messrs. Malaysian Australian Finance Co. Bhd. (hereinafter referred to as the owners) are the owners of the motor vehicle and that the motor vehicle is the subject of a hire purchase agreement made between the owners of the one part and the insured of the other part and it is further understood and agreed that the owners are interested in any monies which but for this endorsement could be payable to the insured under this policy in respect of loss of or damage to the motor vehicle (which loss or damage is not made good by repair reinstatement or replacement) and such monies shall be paid to the owners as long as they are the owners of the motor vehicle and their receipt shall be a full and final discharge to the company in respect of such loss or damage. Save as by this endorsement expressly agreed nothing herein shall modify or affect the rights and liabilities of the insured or the company respectively under or in connection with this policy."

Mohd. Azmi J. (as he then was) said that "because of the fact that the respondent (The Law Union & Rock Insurance Co. Ltd.) has taken upon itself in the relevant endorsement to pay the applicant (Malaysian Australian Finance Co. Ltd.) direct in respect of money arising to be paid under the policy, and the fact that the insurance policy was in fact effected for the applicant's benefit, the respondent should be regarded as trustee and/or agent for the applicant". The learned judge continued:

"Thus, although as a general rule, a contract cannot be enforced except by a party to the contract, in my view, this case comes within the exceptions to that rule and the applicant is entitled to institute claims against the respondent in its own name."

After the judgment in the *Malaysian Australian Finance* case had been delivered, learned counsel for the appellant insurance company, United General Insurance Co. Sdn. Bhd., had submitted that steps was taken by the appellant to amend the endorsement in its motor vehicle insurance policy. When the private motor car insurance policy W/PC/0069 covering Honda Accord Registration No. WAQ 8814 was issued to Wong Kim Miew, the insured, on 27 July 1983 it contained the amended endorsement which was in the following terms:

"It is hereby understood and agreed that Progress Credit Sdn. Bhd. (hereinafter referred to as the owners) are the owners of the motor vehicle and that the motor vehicle is the subject of a hire purchase agreement made between the owners of the one part and the insured of the other part. It is further understood and agreed that any payment made in respect of loss or damage (which loss or damage is not made good by repair reinstatement or replacement) under section 1 of this policy shall be made to the owners as long as they are owners of the motor vehicle and their receipt shall be a full and final discharge to the corporation in respect of such loss or damage. *It is also understood and agreed that notwithstanding any provision in the hire purchase agreement to the contrary this policy is issued to the insured namely Wong Kim Miew as the principal party and not as agent or trustee for the owners and nothing herein shall be construed as constituting the insured as agent or trustee for the owners or as an assignment (whether legal or equitable) by the insured to the owners of his rights benefits and claims under this policy. It is lastly understood and agreed that the insured shall not assign his rights benefits and claims under this policy without the prior consent in writing of the corporation* (emphasis given). Subject otherwise to the terms of the policy."

It was the submission of learned counsel for the appellant in this appeal that the additional words italicized in the endorsement in the policy had the effect of ousting the application of the *Malaysian Australian Finance* case and thereby curtailing the right of the respondent, as legal owners of the motor vehicle No. WAQ 8814, from bringing the suit against the appellant in its own name. Secondly, it was urged that the amendment also restrained the insured, Wong Kim Miew, from assigning his rights under the policy without the prior written consent of the appellant and on the facts of this case, consent in writing had not been given by the appellant to the insured to assign the policy to the respondent.

For the respondent, it was contended by learned counsel that the endorsement, read as a whole, tantamounts to an absolute assignment of the policy by the insured to the respondent with the express or implied consent in writing of the appellant, and that the respondent was therefore entitled to institute this proceeding against the appellant without having to join the insured as a co-plaintiff.

In our judgment, the answer to this appeal depends upon the proper construction to be given to the endorsement contained in private motor car insurance policy No. W/PC/0069.

It was not in dispute that the endorsement in the instant case was worded differently from that in the *Malaysian Australian Finance* case, and that the principal object of the amendment appeared to exclude the rule laid down in the *M.A.F.* case from applying to this policy. The amendment used clear and precise language and, in our opinion, was inserted into the endorsement *ex abundanti cautela.* Since learned counsel for the respondent did not address this court on the first limb of the amendment, it was reasonable to assume that he had tacitly accepted the correctness of the submission advanced by learned counsel for the appellant. We therefore rule that the *M.A.F.* case was distinguishable from the facts of the present case.

The next question to consider was whether learned counsel for the respondent had made good his contention that the endorsement amounted to an absolute assignment and the onus of proving this rested on the respondent.

An assignment means the transfer of contractual rights and liabilities to a third party with or without the concurrence of the other party to the contract. This question was considered by the Federal Court in the case of *Nouvau Mont Dor (M) Sdn. Bhd.* v. *Faber Development Sdn. Bhd.*[2] At p. 270, Seah F.J. (as he then was) in giving the judgment of the court said:

> "It is plain that in every case of this kind, all the terms of the instrument must be considered; and whatever may be the phraseology adopted in some particular part of it, if, on consideration of the whole instrument, it is clear that the intention was to give a charge only, then the action must be in the name of the assignor. While, on the other hand, if it is clear from the instrument as a whole that the intention was to pass all the rights of the assignor in the debt or chose in action to the assignee, then the case will come within section 25(6) of the Judicature Act 1873 and the action must be brought in the name of the assignee (per Mathew L.J. in *Hughes* v. *Pump House Hotel Co. Ltd.* (1902) 2 K.B. 190 at 195)."

Applying this to the facts of this case, we were constrained to hold that not only learned counsel for the respondent had failed to discharge his burden but also it imposed a construction that flies in the face of the amendment contained in the endorsement. The relevant part of the amendment reads:

> "... and nothing herein shall be construed as ... an assignment (whether legal or equitable) by the insured to the owners of his rights benefits and claims under this policy. It is lastly understood and agreed that the insured shall not assign his rights benefits and claims under this policy without the prior consent in writing of the corporation."

The rights regarding assignment were clearly set out in the amendment and since learned counsel for the respondent was unable to produce any written consent duly signed by the appellant, we find that there was no lawful assignment of the policy by the insured, Wong Kim Miew, to the respondent.

For the above reasons, we set aside the decision of the High Court and restore the judgment of the President of the Sessions Court. The appeal is allowed with costs here and in the court below to be taxed. The deposit to be refunded to the appellant.

Appeal allowed.

Solicitors: *Azim Ong & Krishnan; Henry Cheah.*

HARRISONS & CROSFIELDS (M) SDN. BHD. v. PEMUNGUT HASIL TANAH, WILAYAH PERSEKUTUAN

[S.C. (Abdul Hamid C.J. (Malaya), Hashim Yeop A. Sani & Syed Agil Barakbah S.C.JJ.) 20, 21 April & 11 May 1988]

[Kuala Lumpur – Supreme Court Civil Appeal No. 101 of 1987]

Land Law – Land Acquisition – Award – Development potential of lands – Surveyor's fee.

This was an appeal from the decision of the High Court in a land acquisition case. The lands acquired were located in the prestigious areas of Kenny Hill and adjacent to the Prime Minister's Department complex and within a short distance from an already developed commercial area. Evidence was given that the lands were in a prestigious location and, despite their hilly characteristics, were suitable for high quality development. The learned judge of the High Court had increased the award of the Collector by 10% but had disallowed the surveyor's fees.

Held, dismissing the appeal: (1) the learned judge did not give due and adequate consideration to the development potential of the lands acquired. While the learned judge had correctly stated that the government valuation had not taken into account the potential for mixed development for condominium and commercial uses, he was